



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office
P.O. Box 1828
Cheyenne, WY 82003-1828
www.blm.gov/wy



In Reply Refer to:
3100 (921Bargsten)

MAY 29 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Receipt No. 91 7199 9991 7036 1885 1629
Kelly Fuller
Western Watersheds Project
P.O. Box 779
Depoe Bay, OR 97341

Receipt No. 91 7199 9991 7036 1885 1933
Tracy Opp
EOG Resources, Inc.
600 17th Street, Suite 1000N
Denver, CO 80202

SDR No. WY-2019-07 (Part 2)

DECISION

AFFIRMED IN PART, REMANDED IN PART

STAY ON NEW AUTHORIZATIONS ISSUED

On March 5, 2019, the Bureau of Land Management (BLM), Wyoming State Office (WSO) issued a decision (Part 1) responding to a request for State Director Review (SDR) and stay from Western Watersheds Project (WWP) and Center for Biological Diversity (CBD). WWP and CBD have challenged a decision by the Casper Field Office (CFO) documented in the Finding of No Significant Impact and Decision Record (FONSI/DR) for the Sand Creek Project Environmental Assessment (EA).¹ The Sand Creek Project proponent is EOG Resources, Inc. (EOG), a Federal oil and gas lessee and operator.

The WSO's March 5, 2019, decision granted an extension of time (until April 4, 2019) for WWP and CBD to submit supporting information, and inviting EOG to participate in the SDR process in accordance with WSO policy.

On April 4, 2019, the WSO received the supplemental information filed by WWP and CBD. On April 4, 2019, the WSO also received a document from Beatty & Wozniak, P.C., representing EOG, and entitled "[EOG's] Comments and Supporting Data on the Sand Creek Development Project Environmental Assessment."

ISSUES AND DISCUSSION

WWP and CBD raised three new arguments in their supplemental information: (1) that the CFO "was required to analyze both upstream and downstream greenhouse gas emission prior to approving the Sand Creek project" (Supplement at page 2); (2) the CFO's EA "failed to take a hard look at impacts to migratory birds and Project mitigation measures are inadequate to the potential harm" (Supplement at

¹ The EA, FONSI/DR, and other project information are available at the BLM's e-Planning public internet site: <https://go.usa.gov/xEm3q>

page 11); and (3) the CFO's decision "is improper because at least two of its underlying leases had expired prior to Project approval" (Supplement at page 11).

We will address each of these new arguments in turn, below, and respond to the new issues raised by WWP and CBD.

Since WWP and CBD did not provide any additional arguments or information related to their original claims (see SDR WY-2019-07 Part 1), and since the WSO found that WWP and CBD's original arguments were not sufficiently persuasive to grant a stay (*id.*, pages 2-8), we find no reason to change our findings on WWP and CBD's original arguments. We affirm the CFO's decision with regard to WWP and CBD's original arguments.

1. Climate Change Impacts Arising from the Sand Creek Project's Greenhouse Gas Emissions

In their Supplement, WWP and CBD cite to several recent Federal district court decisions to support their argument that the CFO "was required to quantify greenhouse gas [GHG] emissions that would result from the Sand Creek oil and gas Project and did not." (Supplement at page 2).

We note that at least two of the Federal district court decisions cited by WWP and CBD (Supplement at page 3) include decisions that were issued after the CFO's decision and after the WSO's Part 1 decision, such as the March 19, 2019, decision in the District Court for the District of Columbia (*WildEarth Guardians, et al. v. Zinke, et al.*, 1:16-cv-01724-RC) and the March 27, 2019, decision in the District Court for Colorado (*Citizens for a Healthy Community v. U.S. Bureau of Land Management*, No. 117CV02519LTBGP, 2019 WL 1382785).

BLM Response

In light of recent Federal district court decisions, the CFO has requested that the WSO remand this portion of their decision, to restore jurisdiction over the matter to the field office (see Attachment 1) in order to prepare corrective NEPA analysis of GHGs and climate change.

We agree that additional analysis of GHG emissions from the Sand Creek project and their effects is warranted. As requested, we remand the CFO's decision described in the Sand Creek project FONSI and DR. While and until the CFO completes its additional analysis, the WSO is directing a stay of new CFO authorizations that could result in GHG emissions under the Sand Creek EA (new APD approvals or new Sundry Notice approvals for previously-unauthorized actual oil and gas operations).

The U.S. Geological Survey recently found, "Nationwide emissions from fossil fuels produced on Federal lands in 2014 were 1,279.0 million metric tons of carbon dioxide equivalent (MMT CO₂ Eq.) for carbon dioxide (CO₂), 47.6 MMT CO₂ Eq. for methane (CH₄), and 5.5 MMT CO₂ Eq. for nitrous oxide (N₂O). Compared to 2005, the 2014 totals represent decreases in emissions for all three greenhouse gases (decreases of 6.1 percent for CO₂, 10.5 percent for CH₄, and 20.3 percent for N₂O)."²

In their supplement, WWP and CBD provide an estimate for the Sand Creek Project (Supplement at Page 6, estimating a total "lifecycle GHG pollution" of "up to 10,589,210.36 tons" of CO₂e, about 9.6 MMmt CO₂e or an average of around 0.3 MMmt CO₂e/year);³ using this estimate, the annual GHG emissions

² Merrill, M.D., Sleeter, B.M., Freeman, P.A., Liu, J., Warwick, P.D., and Reed, B.C., 2018, Federal lands greenhouse gas emissions and sequestration in the United States—Estimates for 2005–14: U.S. Geological Survey Scientific Investigations Report 2018–5131, 31 p., <https://doi.org/10.3133/sir20185131>.

³ We cannot vouch for the estimates provided by WWP and CBD, and note some possible errors. For example,

arising from production in the Sand Creek Project Area (under full development) would be approximately 0.02% of total GHG emissions from fossil fuels produced on Federal lands in 2014. The BLM recently⁴ estimated that Federal oil and gas leases in Wyoming could emit up to 27.1 MMmt CO₂e per year; under full development, and using WWP and CBD's GHG emissions estimates, the Sand Creek Project would contribute about 1 percent of the annual Wyoming Federal oil and gas GHG emissions. We find there is no harm in allowing EOG to conduct operations under the few existing authorizations⁵ while the CFO remedies the procedural NEPA disclosure requirements for GHGs and climate change. We have determined that a stay on previously-authorized activities is unnecessary while the CFO prepares its corrective NEPA analysis.

2. Migratory Birds

In their Supplement, WWP and CBD cite the EA's disclosure that impacts to birds protected under the Migratory Bird Treaty Act (MBTA)⁶ was possible, and that mitigation of these potential impacts "would reduce – but not eliminate the Project's direct and indirect impacts to migratory birds." (Supplement at page 11).

As WWP and CBD acknowledge, "most of the project is not on federal land" (Supplement at page 11), but believe the CFO has a duty to estimate the number of miles of "undergrounded" (buried) power lines. WWP and CBD suggest that the CFO's Conditions of Approval (COAs) should require power line burial, since the EA acknowledges that some new power lines may be buried.

BLM Response

Other than for those power lines that are on-lease Federal oil and gas lease facilities owned and maintained by the lease operator or those that cross BLM-administered surface, construction and use of powerlines is not a Federal action requiring BLM authorization. In almost all cases, powerlines in the Sand Creek Project Area will be constructed and operated by third-party power companies on non-Federal surface, not the oil and gas lessee or their designated operator. In those cases, no BLM authorization is required (even when located on-lease, since a powerline owned and operated by a third party is not a lease facility),⁷ unless the powerline crosses BLM-administered surface. As the EA acknowledges (at page 11), "EOG does not anticipate the installation of any of these utilities at this time; however, the need for them may arise in the future depending upon the well production; therefore, they are included in this NEPA analysis."

The EA also acknowledges the important jurisdictional limits that exist within the mixed-ownership project area (see Attachment 1 to our Part 1 decision), stating (at page 51):

The following mitigation measures would be applied as COAs to split estate wells and as

WWP and CBD estimated total natural gas production from the project area to be 81.172947 bcf, "which would cause up to 6,035,160.94 tons [5,475,006 metric tons] of lifecycle CO₂e pollution." (Supplement at page 6).

However, the Environmental Protection Agency's GHG equivalencies calculator (available at <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>) indicates that this volume of natural gas would only contribute 4,471,655 metric tons of CO₂e, 18% less than WWP and CBD estimated. In addition, WWP and CBD also appear to overestimate the potential indirect emissions from the Sand Creek EA project.

⁴ Supplemental Environmental Assessment for the May 2015-August 2016 Sold and Issued Leases, DOI-BLM-WY-0000-2019-0007-EA at page 49.

⁵ On May 17, 2019, the CFO searched its records and found that the BLM has, to-date, authorized a total of 20 Federal APDs under the Sand Creek EA.

⁶ 16 U.S.C. § 703

⁷ See, e.g., SDR WY-2011-01 at pages 15-17.

recommend mitigation measures for fee-fee-fed wells:

[...]

To avoid collision and electrocution of raptors and other avifauna, power lines on Federal surface would be constructed in accordance with standards outlined in the Avian Protection Plan Guidelines (APLIC and USFWS 2005).

In their EA, the CFO lists numerous other mitigation measures for the benefits of migratory birds (EA at pages 51-53). The CFO's EA also describes the potential effects, after mitigation, to migratory birds (EA at page 53, concluding:

Residual impacts to migratory birds, raptors, and BLM sensitive species, such as habitat loss, disturbance, and mortality, would be negligible to minor after implementation of the mitigation measures and compliance with applicable state and Federal regulations. Furthermore, if any minor impacts to foraging or nesting habitat and individual species occur, they would be negligible over time.

While WWP and CBD may believe the impacts to migratory birds are not adequately addressed in the EA, we find that the CFO carefully considered potential impacts that could arise from reasonably foreseeable future activities, weighed the limits to the BLM's authority within the mixed-ownership project area, and accurately concluded the potential impacts to migratory birds would be "negligible." The CFO's decision is entitled to deference in this regard ("the BLM, which is charged with managing wildlife habitat on public lands, does have expertise in wildlife management, and its wildlife specialists participated in the preparation of the EA's.... Their reasoned expert opinion, based on a firsthand knowledge of the wildlife resources in the project areas, is entitled to considerable deference" *Wyoming Outdoor Council*, et al., 147 IBLA 110 (1998)). Furthermore, to the extent that WWP and CBD allege that potential incidental take under the MBTA is likely from the Sand Creek project, the DOI has concluded that the MBTA prohibition of take "only applies only to direct and affirmative purposeful actions that reduce migratory birds, their eggs, or their nests, by killing or capturing, to human control."⁸ The proposed action, as submitted by EOG, does not propose such actions, and so WWP and CBD are incorrect in asserting that the CFO must evaluate and mitigate take of MBTA-protected birds within the Sand Creek EA.

We affirm this portion of the CFO's decision.

3. Alleged Expiration of Federal Oil and Gas Leases WYW175928 and WYW177707

WWP and CBD allege that two Federal oil and gas leases within the Sand Creek project areas have "expired..." and that "[w]ithout a valid lease, EOG Resources does not have a legal right to develop the portions of the Sand Creek project associated with those two leases." (Supplement at page 12).

BLM Response

Lease WYW175928 was issued effective December 1, 2008, with a 10-year primary term. On July 17, 2018, EOG (a record title owner) requested a suspension of operations and production. On November 6, 2018, the CFO recommended approval of the suspension request, and on April 19, 2019, the WSO granted the suspension effective July 1, 2018, in accordance with BLM regulations and policy. BLM's

⁸ Solicitor's Opinion, Memorandum M-37050, "Subject: The Migratory Bird Treaty Act Does Not Prohibit Incidental Take." U.S. Department of the Interior's Office of the Solicitor, December 22, 2017.

public LR2000 database denotes the suspension, though WWP and CBD appear to have overlooked it. The lease is still valid and is currently authorized.

Lease WYW177707 was issued effective January 1, 2009, with a 10-year primary term. Under these terms, the lease would expire on December 31, 2018. This is currently shown in the BLM's LR2000 database. When a lease expires, the DOI Office of Natural Resources Revenue (ONRR) submits a list of expiring leases to the BLM, who then coordinates with the field office(s) to ensure that the conditions have not been met to extend or suspend lease expiration. In this case, the ONRR list was not received by the BLM for leases expiring in December 2018 until after the Federal government's early 2019 lapse in appropriations. As a result, the BLM's coordination with the field office was delayed, as was our determination as to whether the lease had expired, and the WSO's updates to information posted to LR2000.

In a recent review of this lease conducted by the WSO and the CFO, we find that the lease is currently held by production from the Catapult 72-0805H well (API number 49-009-38657), and has not expired.

We affirm the CFO's authorizations as they pertain to operations on unexpired Federal oil and gas leases within Sand Creek Project Area.

DECISION

Consistent with the CFO's request, we remand the CFO's decision described in the Sand Creek project FONSI and DR. While and until the CFO completes its supplementary analysis, the WSO is directing a stay of new CFO authorizations for previously-unauthorized actual operations that would result in additional greenhouse gas emissions under the Sand Creek EA. We affirm the CFO's decision as it pertains to the remainder of WWP and CBD's arguments.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (copy attached).

If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from your receipt of this decision. The appellant has the burden of showing that the Decision appealed from is in error.

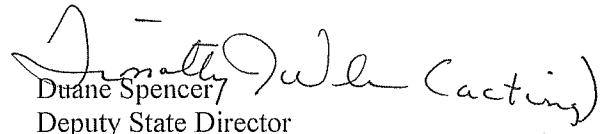
If you wish to file a petition (pursuant to regulation 43 CFR 3165.4(c)) for a stay of the effectiveness of this Decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. A copy of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success of the merits;

3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.


Duane Spencer
Deputy State Director
Minerals and Lands

Attachment
(Form 1842-1)

cc:
FM, Casper
DM, High Plains District



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Casper Field Office
2987 Prospector Drive
Casper, Wyoming 82604-2968



May 23, 2019

In Reply Refer To:
3160

Memorandum

To: Deputy State Director for Minerals and Lands,
Wyoming State Office

From: Lonny R Bagley
Field Manager, Casper

Subject: Remand of State Director Review for Sand Creek Environmental Assessment

In light of the pending State Direct Review (SDR), WY-2019-08, on the Sand Creek Environmental Assessment (EA) (DOI-BLM-WY-P060-2018-0193-EA), I am requesting that the State Director remand the Sand Creek EA and FONSI/DR, so we may consider how best to remedy the concerns identified about greenhouse gas emissions and climate change. Should you chose to remand this case, we would recommend a stay on new BLM authorizations for actual operations under the Sand Creek EA until a new decision is issued by the Casper Field Office.

RECEIVED

MAY 28 2019

BLM-WY STATE OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

**1. NOTICE OF
APPEAL.....**

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the *FEDERAL REGISTER*, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL..... Bureau of Land Management
5353 Yellowstone Road, Cheyenne, WY 82009 or P.O. Box 1828, Cheyenne, WY 82003

WITH COPY TO
SOLICITOR... U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region
755 Parfet Street #151, Lakewood, CO 80215

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO
SOLICITOR..... U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region
755 Parfet Street #151, Lakewood, CO 80215

4. ADVERSE PARTIES.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)